

June 26, 2018

via ECFS and e-mail

Marlene H. Dortch
Secretary, Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

**Re: Certification Requirements for PEG Programmers and Program Producers
CG Docket No. 05-231**

Dear Ms. Dortch,

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), and the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN) (“Consumer Groups) and the Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC) respectfully urge the Commission to carefully consider the needs of deaf and hard of hearing consumers in resolving issues raised in the Aug. 26, 2016 petition for waiver of the Alliance for Community Media (ACM) (ACM Petition).¹

In particular, we reiterate that, in resolving the ACM Petition, the Commission should:

- Ensure that any exemption from the certification rules applies only to programming aired on public access, governmental, and educational access (PEG) channels that are actually exempt from the caption provision rules and disclaim any implication that PEG channels are exempt from the caption provision rules generally;
- Bearing in mind the importance of equal access to PEG programming, make clear that any exemption of PEG programmers from the certification rules will not preclude or prejudice in any way the narrowing or elimination of exemptions that may apply to PEG channels when the Commission acts on the Consumer Groups’ petition to review and narrow or eliminate categorical exemptions;

¹ https://ecfsapi.fcc.gov/file/10825083956243/ACM_Petition%2008.25.2016.pdf

- Clarify and emphasize that all PEG channels whose programs are all exempt must certify that all their programs are exempt and specify each category of exemption they claim applies; and
- Clarify and emphasize that all PEG channels carrying at least some non-exempt programming must certify which, if any, of their programs are exempt and which, if any, exemptions they claim apply;²

Additionally, we urge the Commission to act carefully in addressing the request by NCTA–The Internet & Television Association to “clarify that that video program owners of individual programs included in linear program networks distributed by MVPDs need not register or certify compliance with the captioning rules.”³ NCTA explains:

The *Second Report and Order* [on caption quality] states that “for purposes of the Commission’s television closed captioning requirements, we conclude that the term video programmers includes all VPOs.” And because the *Second Report and Order* requires “each video programmer” to “submit a certification to the Commission” stating that the “video programmer” provides captioning for its programs in compliance with the rules or is exempt, the [ACM] Petition seeks a waiver of this requirement for producers of PEG programming.⁴

NCTA notes that, under ACM’s reading of the certification rule, “producers of every program licensed for distribution would conceivably be covered, whether the programs are aired on an access channel exempt from the captioning rules or on any other channel.”⁵ NCTA argues that “any waiver granted to ACM should make clear that no program-by-program certification or registration is required by the revised captioning responsibility rules” or alternatively that “any such requirement should be waived in the case of non-broadcast networks that themselves certify compliance with the rules.”⁶

² See generally Comments of TDI, et al. (Feb. 9, 2017), <https://www.fcc.gov/ecfs/filing/102091327006936>; Reply Comments of TDI, et al. (Feb. 27, 2017), <https://www.fcc.gov/ecfs/filing/10224720329729>

³ Comments of NCTA at 1 (Feb. 9, 2017), <https://www.fcc.gov/ecfs/filing/10209784926016>.

⁴ *Id.* at 2 (citing *Closed Captioning of Video Programming, Second Report and Order*, CG Docket No. 05-231, 31 FCC Rcd. 1469 (Feb. 19, 2016) (internal pincites omitted), https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-17A1_Rcd.pdf).

⁵ *Id.* at 3.

⁶ *Id.* at 5.

We reiterate our agreement with NCTA that the rules articulated in the Commission's *Second Report and Order* on caption quality are amenable to a broad reading that could impose a program-by-program certification requirement on non-PEG programming.⁷ While we reiterate our procedural concerns about addressing this issue in the narrow context of the ACM petition without the development of a fuller record, should the Commission act on NCTA's request, we again urge the Commission to clarify at a minimum that each linear programming network remains responsible as a "video programmer" for providing captioning certifications even if its individual program producers do not.⁸

We also reiterate the importance of the Commission ensuring that any such action maintains "the new certification regime[s] . . . enhance[ment] [of the Commission's] ability to enforce the captioning rules against video programmers and VPDs, and thus ensure the needs of consumers are better served."⁹ **We urge the Commission to verify that receiving certifications only from programmers (and not program producers) has and will continue to serve as a sufficient basis for the Commission to aggressively resolve captioning issues without being hamstrung by an inability to exercise jurisdiction over the responsible party.** In particular, the Commission should reaffirm its commitment to hold video programmers responsible for violations of the relevant captioning rules and that it will not excuse violations on the grounds that non-certifying producers are responsible for some particular dimension of compliance with the rules instead of certifying programmers.

Respectfully submitted,

/s/

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⁷ TDI Reply Comments at 3.

⁸ *Id.* at 4.

⁹ *Second Report and Order*, 31 FCC Rcd. at 1490.

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